

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5711 of 1984

Date of decision: 26-12-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAI BHARAT CO.OP.HOUSING SOCIETY LTD.

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner
V.B. Gharania for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/12/96

ORAL JUDGEMENT

The petitioner, a registered cooperative housing

society has challenged the orders of the respondents under which the land granted to the Society for construction of houses has been forfeited. It is not in dispute that allotment of land was cancelled by respondent No.2 only on the ground that the land was not used for the purpose of construction of houses for more than 17 years and as such the society did not require the facility. Appeal filed against that order has also been dismissed.

2. On 15th April, 1985 this court, while admitting the petition, granted ad-interim relief in terms, "it would be open to the petitioner to make further construction over the disputed land which would be completed within a year". The counsel for the petitioner submits that construction could not be completed as ordered by this court within one year. Civil Application was filed in which time was extended by this court and within the extended time construction has been completed. The counsel for the petitioner contended that the land has been used for construction of residential houses by the Society and its members have been allotted houses and they are in possession thereof.

3. The ground, that the petitioner had not used the land for more than 17 years, on which the respondents passed order for confiscation of the land allotted to the petitioner by the Government was justified and correct. That fact goes to show that the Society was not in need of the land for residential houses for its members. It is a case where the petitioner got the land to be kept for appreciation of the value. In case this court would not have protected the petitioner by granting extension of time to raise construction and the fact that the petitioner has now raised construction on the land for which it was allotted, and in case the orders impugned in this special civil application are allowed to stand, it will cause serious prejudice to the members who are now occupying the constructed house and Otherwise also it will not be in the larger national interest, the same have to be set aside. If the special civil application is dismissed, then the consequence thereof would be demolition of the house which will give rise to individual sufferings of holders of those houses, and it will be a national waste. That is the reason why time and again the Supreme Court observed that relief of the nature which should be granted only at the final stage of acceptance of the petition on merits should not be granted by way of interim relief in favour of the litigants. Here is a case where the petitioner is not the real person who may be affected in case this petition

is dismissed. After this court has permitted construction to be made on the land for the members of the Society, innocent persons would have spent huge amounts for purchasing the house. Taking into consideration the subsequent events and the fact that this court has granted final relief to the petitioner at the interim stage itself, this petition is to be accepted. In fact, now this court has no discretion left with it except to grant the relief, though the orders passed by the authorities may not be illegal or erroneous.

4. In the result this special civil application succeeds and the same is allowed. The orders passed by respondents No.1 and 2, impugned in this special civil application, are quashed and set aside. Rule made absolute accordingly, with no order as to costs.

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